

1 JAMES M. CHADWICK (Bar No. 157114)
DIANA NG FUNG (Bar No. 185175)
2 **DLA PIPER RUDNICK GRAY CARY US LLP**
2000 University Avenue
3 East Palo Alto, CA 94303-2248
Tel: 650.833.2000
4 Fax: 650.833.2001

E-filed 10/4/05

5 Attorneys for Plaintiff
HORTA, LLC
6
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 HORTA, LLC,
12 Plaintiff,
13
14 v.
15 CITY OF SAN JOSE,
16 Defendant.

CASE NO. C 02-04086 JF (RS)

[Related Case No. C 00-20018 JF]

**STIPULATION AND [PROPOSED] ORDER
CONTINUING NOVEMBER 4, 2005
HEARING ON HORTA, LLC'S MOTION
TO RECONSIDER, REOPEN, AND AMEND
JUDGMENT**

[Civil Local Rule 6-2]

Judge: Hon. Jeremy Fogel
Complaint: August 23, 2002

STIPULATION

WHEREAS, on February 28, 2005, the Court entered judgment in this action;

WHEREAS, on March 14, 2005, plaintiff Horta, LLC ("Horta") filed its Motion to Reconsider, Reopen, and Amend Judgment (the "Motion to Amend") and set it for hearing on May 6, 2005;

WHEREAS, on May 6, 2005, the Court continued the hearing on the Motion to Amend to August 5, 2005 to permit Horta to conduct additional discovery relating to issues presented in the Motion to Amend;

WHEREAS, Horta has served discovery on non-party Federal Aviation Administration ("FAA"), in the form of document requests and requests for deposition testimony relating to issues presented in the Motion to Amend;

WHEREAS, the FAA has provided a partial production of documents responsive to Horta's document requests;

WHEREAS, as of July 7, 2005, the FAA had neither completed its production nor provided a date certain by which the production will be completed, nor provided Horta any of the requested deposition testimony;

WHEREAS, on July 7, 2005, Horta and the City stipulated to continuing the August 5, 2005 hearing on the Motion to Amend at least ninety (90) days;

WHEREAS, on July 13, 2005, the Court continued the hearing on the Motion to Compel to November 4, 2005;

WHEREAS, the FAA has subsequently informed Horta that it refuses to complete the production of documents and refuses to make any of the requested witnesses available for deposition;

WHEREAS, the FAA has filed a motion to quash Horta's subpoenas for documents and deposition testimony, which is set for hearing in this action on November 23, 2005;

WHEREAS, Horta contends that it has additional discovery to conduct once it obtains the FAA's complete responses to Horta's discovery requests and the deposition testimony of certain FAA representatives;

1 WHEREAS, Horta contends that it requires additional time to complete discovery pertaining
2 to the issues raised in the Motion to Amend;

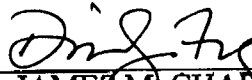
3 WHEREAS, Horta and the City of San Jose (the "City") agree that November 4, 2005
4 hearing on the Motion to Amend should be continued for at least ninety (90) days;

5 THEREFORE, IT IS HEREBY STIPULATED by and between the parties to this action that
6 the August 5, 2005 hearing on Horta's Motion to Amend shall be continued at least ninety (90)
7 days.

8 Dated: September 30, 2005

DLA PIPER RUDNICK GRAY CARY US LLP

10 By



JAMES M. CHADWICK

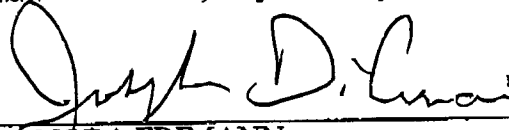
DIANA NG FUNG

Attorneys for Plaintiff HORTA, LLC

14 Dated: September 30, 2005

RICHARD DOYLE, City Attorney

16 By



NORA FRIMANN

JOSEPH P. DICUICCIO

SANDRA LEE

Attorneys for Defendant CITY OF SAN JOSE

26 **ORDER**

27 Pursuant to stipulation, it is so ordered. The hearing on Horta's Motion to Reconsider,
28 Reopen, and Amend Judgment is further continued from November 4, 2005 to February 3, 2006,

1 at 9:00 a.m., in the courtroom of the Honorable Jeremy Fogel, located at 280 South First Street, San
2 Jose, California.

3 October 5, 2005
4 Dated: September __, 2005

5 /s/electronic signature authorized

6 JEREMY FOGEL
7 UNITED STATES DISTRICT COURT JUDGE
8
9
10
11
12
13
14

SD: 15

16
17
18
19
20
21
22
23
24
25
26
27
28